

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Initially, Applicants point out that the Examiner has not acted on all of the claims pending in the application. The Office Action of January 5, 2004 discusses claims 1-10. However, Applicants submitted a Preliminary Amendment on December 7, 2001, amending claims 3-7, 9 and 10, and adding new claims 11-32. The PTO acknowledged receipt of the Preliminary Amendment on the Notice of Acceptance of February 14, 2002.

Claim 1 has been amended to incorporate the limitations of claim 4, and to clarify that the sugar has a particle size of 50 μm to 1 mm. The particular size for the sugar particles is supported by page 7, lines 22-24 of the specification. Claim 8 has been amended to depend from claim 1, limiting the process to one for producing the coating material according to claim 1. Claims 9, 26, 27 and 29-31 have been amended to correct inadvertent errors. Claim 10 has been amended to depend from claim 9 rather than claim 8. Claims 4, 16, 19, 23, 28 and 32 have been canceled.

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 1-10 under 35 U.S.C. § 102(b) as being anticipated by Kondo et al. is respectfully traversed.

The Examiner takes the position that Kondo et al. disclose non-hydroscopic icing compositions that contain sugar and fat and water in the amounts set forth in the claims. Furthermore, the Examiner asserts that the particle size of the sugars, the melting properties of the fat, the concept of heating to melt, and then cooling, and the use of fats with lauric acid in them are all taught in the reference.

However, the present invention provides a coating material for the confectionery/bakery use, which has a transparent appearance similar to a glaze and a fondant, a crispy eating feeling, and a significantly improved sticky property (see page 2, lines 10-25 and page 8, lines 8-22 of the specification). The coating material of the present invention is characterized in that (a) the main components are an oil and fat and a sugar, (b) the coating material contains coarse particles of a solid

component other than oil and fat having a particle size of 50 μm or more, (c) the content of a solid fat in said oil and fat is 45% or more at 20°C and 15% or less at 35°C, (d) the sugar used has a particle size of 50 μm to about 1 mm, and (e) the coating material is that for the confectionery/bakery use. The present invention also provides a process for producing the coating material and a process for producing a coated confectionery or bakery product comprising the coated material.

Kondo et al. do not teach or suggest the combination of the characteristic elements (a) through (e) outlined above, as will be discussed below.

Kondo et al. disclose a non-hydroscopic icing composition comprising sugar, fat and an emulsifier as the main components, wherein 80% by weight or more of said sugar is particles passing through a 63 μm mesh size sieve and 50% by weight or more of said sugar is particles having a size from 45 μm to 63 μm and the sugar content in the icing is 50% by weight or more (see Kondo et al., claim 1). On the other hand, in the present invention, a sugar having such a restricted particle size is not required. In fact, the sugar of the present invention may be coarser, i.e., a particle size of 50 μm to about 1 mm (above characteristic element (d)), as required in amended claim 1. There is no teaching in Kondo et al. directing one skilled in the art to use Applicants' claimed particle size. On the contrary, Kondo et al. clearly desire a particle size of less than 63 μm . "In the icing composition of the present invention, 80% by weight or more, preferably 90% by weight or more and still preferably 99% by weight or more, of the sugar particles pass through a 63 μm mesh size sieve." (See Kondo et al., column 2, lines 47-50). Additionally, Kondo et al. teach that the use of large particles would be a detriment to their invention, by making the icing not smooth but coarse (see column 2, lines 64-65). This is in complete contrast to Applicants' invention, in which sugar particles up to 1 mm can be used in the coating composition.

Additionally, Kondo et al. do not teach or suggest that the coating material contains coarse particles of a solid component other than oil and fat having a particle size of 50 μm or more (above characteristic element (b)). Nor do Kondo et al. teach that the coating material has a transparent appearance similar to a glaze and a fondant, and a crispy eating feeling (above characteristic element (e)).

For these reasons, Applicants take the position that the present invention is clearly patentable over Kondo et al.

The rejection of claims 1-3, 6, and 7 under 35 U.S.C. § 102(b) as being anticipated by Beeson et al. is respectfully traversed.

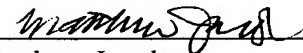
First, Applicants point out that Beeson et al. can not serve as a 102(b) reference because Applicants' PCT application was filed prior to the publication date of Beeson et al..

Second, Applicants have amended claim 1 to incorporate the limitations of claim 4, which was not rejected over the Beeson et al. reference, and thus rendering this rejection moot.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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